



CALIFORNIA STATE PERSONNEL BOARD

GRAY DAVIS, Governor

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CALIFORNIA STATE PERSONNEL BOARD MEETING
801 Capitol Mall
Sacramento, California

Public Session Location - Room 150
Closed Session Location - Room 141

FULL BOARD MEETING MINUTES**

MARCH 5, 2002

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

Ron Alvarado, President
William Elkins, Vice President
Florence Bos, Member
Sean Harrigan, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. State Personnel Board staff testified at the joint meeting of the Assembly Select Committee on Language Access to Government, and the Senate Committee of the Judiciary on the recent activities of the State Personnel Board concerning the Dymally-Alatorre Bilingual Services Act.
- B. The Department of Finance is doing a review of vacant positions at the State Personnel Board during the last fiscal year. The review is part of a statewide review of vacancies in departments.

** The State Personnel Board Summary Minutes can be obtained at the following Internet address:

<http://www.spb.ca.gov/spbmeet/spbminfrd.cfm>

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on the following:

Litigation:

- A. Young v. Gannon/Department of Industrial Relations - Court of Appeal issued an unpublished decision affirming judgment of trial court sustaining the State Personnel Board's decision upholding termination of this worker's compensation judge for failing to timely issue his decisions and for acting inappropriately toward 2 female attorneys.
- B. Connerly v. State Personnel Board, et al. - Superior Court will decide issue of whether to accept respondent's stipulation to share costs at the hearing on March 18, 2002.
- C. International Union of Operating Engineers (IUOE) v. State of California - Judge Gray has issued his ruling on IUOE's petition to confirm an arbitration award rendered pursuant to the Unit 12 MOU process declared unconstitutional by Judge Ohanesian, he ruled:
"Jurisdiction vests with the State Personnel Board for review of disciplinary actions and rejections during probation of state civil service employees, and not with this court. To avoid unnecessary repetition, the court in its findings agrees with the reasons for the invalidity of the arbitration provisions at issue as found by the Honorable Gail D. Ohanesian in the court's rulings of October 17, 2001 and November 27, 2001, and that of the Honorable Lloyd G. Connely dated December 22, 1999, with regard to similar language. The court further finds that confirmation of the arbitration award would be inconsistent with the court's prior holdings. The petition is denied."
- D. Martino v. State Personnel Board - Petition for writ of mandate denied in this case in which the State Personnel Board sustained dismissal of petitioner for using excessive force on parolee and lying about it.
- E. Roe v. State Personnel Board - We have received the writ ordering the State Personnel Board to change dates on our backpay order to provide for additional backpay and to retain jurisdiction over this proceeding and provide petitioner with pre-removal due process.

March 5, 2002

- F. Borroel v. State Personnel Board - The Department of Personnel Administration has withdrawn its petition challenging Administrative Law Judge's denial of motion to dismiss.

Other

- A. Council of Counsels - Scheduled for March 7, 2002.
- B. Select Advisory Panel on Policy, PRID and Appeals (SAPPPA) minutes were distributed to State Personnel Board members.

4. REPORT ON LEGISLATION - Judy Balmain

The State Personnel Board voted on the following:

- A. AB 1791 (Runner) - The bill will amend the Political Reform Act in several ways. Will require state agencies to adopt a "Code of Ethics," by January 1, 2002. Will require designated employees to file their statement of economic interest prior to commencing work, rather than within 30 days. Mandates that designated employees who negotiate contracts worth \$500,000 pledge to disqualify themselves from and conflicts of interests and that written findings be made as to whether an employee has an actual conflict of interest. NEUTRAL.
VOTE: Alarado, Elkins, Bos, Harrigan - Aye.
- B. SCA 7 (Burton) - This Senate Constitutional Amendment proposes to amend the Constitution to provide that, except as otherwise provided, the people have a right to attend, observe, and be heard in meetings of elected and appointed public bodies, and to inspect and copy records made or received in connection with the official business of any public body, agency, officer, or employee or anyone acting on their behalf. OPPOSE.
Vote: Alvarado, Elkins, Bos, Harrigan - Aye.

5. HEARING - TO CONSIDER THE STAFF'S REPORT ON THE STATUS OF THE STATE DISCRIMINATION COMPLAINT PROCESS

Persons Participating:

Note: Among the following speakers giving testimony were CSEA Members, Stewards and the California Civil Rights Officer Counsel.

Ted Edwards, Manager, California State Personnel Board
Judy Callahan, Staff, California State Personnel Board
John Adkisson, Attorney at Law, Hanson, Bridgett, Marcus,
Vlahos & Rudy LLP
Alex Garza, California State Employees Association
Robin Corralejo, California Civil Rights Officers Council and
EEO Officer, CalPERS
Brenda Harris, Education Program Consultant, Department of
Education
James Oliver, Employee, Franchise Tax Board
Andres Mendez, Office of Equal Opportunity, Department of
Education Representative
Marty Ware, Former Employee, Franchise Tax Board
Rebecca Sandoval, Employee, Alcohol & Drug
Debbie Wharry, Employee, CalTrans
Sandy Oxley, Employee, State Compensation Insurance Fund
Marcell Mills, Former State Employee, Franchise Tax Board
Marc Boughton, Union Member, Statewide Division Officer
Linda Jackson, AGPA, Department of Motor Vehicles
Al Rojas, Industrial Relations
Carol Straubinger, Department of Corrections
Van Evans, Senior Compliance Representative, Franchise Tax
Board
Marcell Mills, Jr., Private citizen
Reggie Toran, Former employee, Office of Criminal Justice
Planning

ACTION: Hearing held

6. HEARING - PSC NO. 01-09 (DPR)
Appeal of the Department of Pesticide Regulation (DPR) from
the Executive Officer's November 8, 2001, Disapproval of
Personal Services Contracts (Contracts) with PTRL West, Inc.,
Agricultural and Priority Pollutants Laboratories, Inc., and
Battelle Memorial Institute, in response to the request for
review submitted by the California Association of
Professional Scientists (CAPS)

Persons Participating:

Gary Knuttila, Staff Counsel, Department of Pesticide
Regulation
Steven Bassoff, Attorney, representing California Association
of Professional Scientists

ACTION: Submitted

7. ORAL ARGUMENT

Oral argument in the matter of RICKEY ALLEN, CASE NO. 01-0199. Appeal from Dismissal. California Science Center.

Persons Participating:

Linda Nelson, Labor Relations Counsel, Department of Personnel Administration, representing California Science Center

Adam Stern, Attorney at Law, Law Offices of Levy, Stern & Ford, representing appellant

ACTION: On March 5, 2002, adopted Board decision sustaining the dismissal.

VOTE: Alvarado, Elkins, Bos, Harrigan - Aye.

8. ORAL ARGUMENT

Oral argument in the matter of MARTIN GREENHALGH, CASE NO. 01-1055. Appeal from five-percent reduction in salary for 12 months. Department of Corrections.

Persons Participating:

Esiquio Rivera, Employee Relations Officer, representing Department of Corrections

Bradley Stevens, Staff Legal Counsel, California Correctional Peace Officers Association, representing appellant

ACTION: Submitted

9. ORAL ARGUMENT

Oral argument in the matter of PETE REECE, CASE NO. 00-1605. Appeal from denial of request for reasonable accommodation. Department of State Compensation Insurance Fund.

Persons Participating:

Cynthia Chin-Perez, Attorney in Charge, representing State Compensation Insurance Fund

Harry J. Gibbons, Attorney at Law, California State Employees Association, representing appellant

ACTION: Submitted

10. ORAL ARGUMENT

Oral argument in the matter of EVELYN YOUNG, CASE NO. 00-3016. Appeal from 15 working days suspension. Department of Aging.

Persons Participating:

Chisorom U. Okwuosa, Staff Counsel III, Specialist,
representing Department of Aging
Michael White, Attorney at Law, representing appellant

ACTION: Submitted

BOARD ACTIONS

11. STATE PERSONNEL BOARD SUMMARY MINUTES OF FEBRUARY 20, 2002

ACTION: Scheduled for approval at the March 19, 2002, Board meeting.

12. ACTION ON SUBMITTED ITEMS

ACTION: See pages 13-14.

13. ADMINISTRATIVE LAW JUDGE CASES

On March 5, 2002, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Harrigan - Aye.

PROPOSED DECISIONS

DAVID ARANZUBIA, CASE NO. 01-0378

Appeal from demotion

Warehouse Manager II to the position of
Material and Stores Supervisor I

Lancaster-State Prison

Department of Corrections

ACTION: Demotion sustained

ALI R. PIRAHANCHI-FARD, CASE NO. 01-1937

Appeal from two-step reduction in salary
for six months

Transportation Engineer (Civil)

Department of Transportation

ACTION: Two-step reduction in salary for six months
modified to a one-step reduction in salary for six months

ROBERT TENHET, CASE NO. 01-3786
Appeal from dismissal
Psychiatric Technician Assistant
Department of Developmental Services
ACTION: Dismissal revoked

CURRY THOMAS, CASE NO. 01-1270
Appeal from dismissal
Water and Power Dispatcher
Department of Water Resources
ACTION: Dismissal modified to a one year suspension

KENNETH HOWARD, CASE NO. 01-2647
Appeal from one step reduction in salary
for six months
Correctional Lieutenant
Susanville - State Prison
Department of Corrections
ACTION: One-step reduction in salary for six months revoked

WENDYLIN DONALD, CASE NO. 00-3953
Appeal from rejection during probationary
period
Psychiatric Social Worker
Department of Mental Health
ACTION: Rejection during probationary period revoked

MARILYN SCHAFF, CASE NO. 00-3644
Appeal from termination
Chief Counsel II, (CEA)
Department of Motor Vehicles
ACTION: CEA termination sustained

ROBERT DIAZ, CASE NO. 00-2230B
Appeal for determination of back salary,
benefits, and interest after reinstatement
Officer
California Highway Patrol
ACTION: Back salary, benefits and interest awarded

ARBITRATION

SCOTT PETERSON, CASE NO. 01-3830
Appeal from five days suspension
Officer
California Highway Patrol
ACTION: On March 5, 2002, Board adopted the decision
sustaining the 5 day suspension

PETITIONS FOR REHEARING

RUTH CANTU, CASE NO. 01-2680
Appeal from rejection during probationary period
Peace Officer I
Costa Mesa - Developmental Center
Department of Developmental Services
Petition for rehearing filed by appellant denied

DAMON MORRIS, CASE NO. 00-3542P
Appeal from dismissal
Youth Correctional Officer
Department of the Youth Authority
Petition for rehearing filed by respondent denied
RYAN RICHINS, CASE NO. 00-3984P
Appeal from dismissal
State Traffic Officer
Department of California Highway Patrol
Petition for rehearing filed by appellant denied

SONNY SALAZAR, CASE NO. 01-1951P
Appeal from dismissal
Janitor
Department of General Services
Petition for rehearing filed by appellant denied

14. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION 18671.1
EXTENSION.

ACTION: See pages 15-17.

15. WITHHOLD APPEALS

On March 5, 2002, the Board adopted the following decisions
presented by Walter Vaughn, Executive Officer, California
State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Harrigan - Aye.

JOHN ADAMS, CASE NO. 00-4184
Classification: Correctional Sergeant
Department of Corrections
ACTION: GRANTED

ROBERT DOBBS, CASE NO. 01-1970
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

SILAS DURHAM, CASE NO. 01-2007
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

TIMOTHY FORD, CASE NO. 01-2009
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

EDWARD HISEL, CASE NO. 01-1455
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

GARY JOHNSON, CASE NO. 01-2012
Classification: Medical Technical Assistant (CF)
Department of Corrections
ACTION: DENIED

MARLON JOHNSON, CASE NO. 01-0426
Classification: Correctional Officer
Department of Corrections
ACTION: DISMISSED

DENNIS MCCALL, CASE NO. 01-1566
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

ROGER MILLER, CASE NO. 01-2006
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

ISAAC MOORE, CASE NO. 01-1564
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

16. MEDICAL APPEALS

On March 5, 2002, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Harrigan - Aye.

DONNA BEESLEY, CASE NO. 01-3538
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

LAWANDA BUTLER, CASE NO. 01-1396
Classification: Correctional Officer
State Personnel Board
ACTION: DENIED

DENNIS FELLERS, CASE NO. 01-2916
Classification: Cadet, California Highway Patrol
California Highway Patrol
ACTION: DENIED

CURTIS KEATING, CASE NO. 02-0107
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

PHILLIP MALDONADO, CASE NO. 02-0235
Classification: Medical Technical Assistant (CF)
Department of Corrections
ACTION: GRANTED

MORGAN MCGREW, CASE NO. 01-2364
Classification: Cadet, California Highway Patrol
California Highway Patrol
ACTION: GRANTED

JEAN RUPERT, CASE NO. 01-1470
Classification: Correctional Lieutenant
State Personnel Board
ACTION: DENIED

SHANNAN SANDOVAL, CASE NO. 02-0046
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

GREGORY SCHOO, CASE NO. 01-4227
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

17. RULE 211 APPEALS

On March 5, 2002, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Harrigan - Aye.

DAVID ARAGON, CASE NO. 01-3621
Classification: Correctional Officer
Department of Corrections
ACTION: DISMISSED

ROXIE TAYLOR, CASE NO. 01-3455
Classification: Program Technician
State Personnel Board
ACTION: DISMISSED

18. REQUEST TO FILE CHARGES CASES
PETITIONS FOR REHEARING CASES

On March 5, 2002, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Harrigan - Aye.

DEPARTMENT OF INDUSTRIAL RELATIONS/PATRICIA CHESTNUT,
CASE NO. 01-2090
Classification: Staff Services Manager I
Department of Industrial Relations
ACTION: GRANTED

JON WROTEN, CASE NO. 01-0500P
Classification: Associate Governmental Program Analyst
Public Employees Retirement System
ACTION: DENIED

19. NON-HEARING CALENDAR

On March 5, 2002, the Board adopted item "A." This item was presented by Karen Coffee, Chief, Personnel Resources and Innovations Division, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Harrigan - Aye.

A. FOSTER CARE OMBUDSPERSON

The California Department of Social Services proposes establishment of a new classification titled Foster Care Ombudsperson, and adoption of a 12-month probationary period.

20. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

Staff has approved the following:

A. ALTERNATE RANGE CRITERIA 110

The Department of Personnel Administration proposes minor revisions to alternate range criteria 110 which will permit Departments, other than Department of Developmental Services, to use the class of Psychiatric Technician Apprentice

ACTION: Noted

21. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION

- (1) LEGISLATIVE DIRECTOR, CALFED BAY-DELTA PROGRAM
The Department of Water Resources proposes to allocate the above position to the CEA category. The Legislative Director position serves as the principal policy advisor to the CALFED Program Director, and plans, organizes and directs the State and Federal components of the legislative program. The position will represent CALFED before the Legislature and Congress, prepare reports to the Legislature and Congress, perform Annual Program Review and Assessment of Balance, oversee Program coordination, and assist the Director in the development and review of long-term governance proposals. The department indicates that the position is at the third organizational level and will report to the Chief Deputy Director.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW CEA POSITIONS

- (1) DEPUTY DIRECTOR, LEGISLATIVE AND PUBLIC AFFAIRS
The Department of Alcohol and Drug Programs' request to allocate the above position to the CEA category has been approved effective February 8, 2002.

ACTION: Noted

A D J O U R N M E N T

SUBMITTED

1. SUSAN BERGER-TULLY, CASE NO. 01-0489P. Appeal from rejection during probation. (Oral argument held November 6, 2001).

ACTION: On March 5, 2002, adopted Board decision revoking the rejection on probation, restoring appellant to her position as a permanent Graphic Specialist II, and ordering backpay under Education Code section 89540.

VOTE: Alvarado, Elkins, Bos, Harrigan - Aye.

2. SVETOZAR STUKOVSKY, CASE NO. 99-3583. Appeal from dismissal. Department of Corrections. (Oral argument held January 8, 2002).

ACTION: On March 5, 2002, adopted Board decision modifying dismissal to a 1-year suspension, and awarding backpay, benefits and interest.

VOTE: Alvarado, Elkins, Bos, Harrigan - Aye.

3. State Personnel Board proposes regulations to clarify and codify the process for filing, processing, hearing, and deciding complaints of Whistleblower Retaliation in State Service. (Hearing held February 7, 2002).

NO ACTION

4. State Personnel Board proposes regulations to clarify the Discovery Process that will apply to evidentiary hearings concerning specified complaints or appeals, in some cases also involving alleged discrimination or retaliation. (Hearing held February 7, 2002).

NO ACTION

5. STEPHEN J. SURTSHIN, CASE NO. 00-1724P AND 00-3176P. Appeal from two-step reduction in salary for six months. Department of Mental Health. (Written argument presented February 7, 2002).

NO ACTION

6. VICTOR FINK, CASE NO. 00-2363. Appeal from medical termination, demotion and transfer. California Highway Patrol. (Oral Argument held February 8, 2002).

NO ACTION

7. MICHAEL MACKENZIE, CASE NO. 00-1817. Appeal from demotion. California Department of Corrections. (Oral Argument held February 8, 2002).

NO ACTION

8. HEARING - PSC 01-08: Appeal of the California Science Center (CSC) from the Executive Officer's August 23, 2001 disapproval of a contract between CSC and Swayzer's Inc., for grounds maintenance services at Exposition Park Los Angeles, in response to the request for review submitted by the International Union of Operating Engineers. (Hearing held February 8, 2002).

ACTION: On March 5, 2002, adopted Board decision sustaining the Executive Officer's decision disapproving the contract.

VOTE: Alvarado, Elkins, Bos, Harrigan - Aye.

9. EVELYN YOUNG, CASE NO. 00-3017. Request to File Charges appeal. Classification: Supervising Governmental Auditor I, Department of Aging. (Presented to Board February 8, 2002).

NO ACTION

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

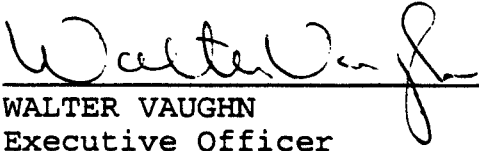
WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on March 5, 2002.



WALTER VAUGHN
Executive Officer
California State Personnel Board

VOTE: Alvarado, Elkins, Bos, Harrigan - Aye.